

# UNREASONABLE COMPLAINANT OPERATING GUIDELINE

18 July 2019

administration

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**PARENT DOCUMENT:** Corporate Complaint Handling Operating Guideline**PURPOSE**

City of Adelaide is committed to providing a high level of service to all customers who contact us, including those with a complaint or feedback. However, Council's ability to deliver for the community depends on:

- our ability to do our work and perform our functions in the most effective and efficient ways possible
- the health, safety and security of our employee
- our ability to allocate our resources fairly across all requests/complaints we receive.

When complainants behave unreasonably in their dealings with us, their conduct can significantly affect our success and wellbeing. As a result, the purpose of this Guideline is to enable the City of Adelaide to take fair, reasonable, proactive and decisive action to manage any complainant conduct that unreasonably affects us.

It should be noted this Guideline focuses on complaints deemed 'unreasonable'. Requests, enquiries and complaints which are not unreasonable as per this Guideline will be managed through other means, as outlined in Council's Customer Charter and Corporate Complaint Handling Operating Guideline.

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**OPERATION****Defining Unreasonable Complainant Conduct**

Unreasonable complainant conduct ('UCC') is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our employees, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable (or vexatious) demands
- Unreasonable lack of cooperation
- Unreasonable (or frivolous) arguments
- Unreasonable behaviours

**Unreasonable persistence**

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, employees, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.
- Persistently demanding a review of a decision simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints.
- Reframing a complaint in an effort to get it taken up again.
- Bombarding our employees/organisation with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within our organisation and/or externally to get a different outcome or more sympathetic response to their complaint.

### **Unreasonable (or vexatious) demands**

Unreasonable or vexatious demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, employees, services, time and/or resources, or are made to harass, annoy or delay Council. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Insisting on talking to a Senior Manager, the CEO or Lord Mayor personally when it is not appropriate or warranted.
- Emotional blackmail and manipulation with the intention to intimidate, harass, shame, seduce or portray themselves as being victimised – when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances – eg for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- Demanding services that are of a nature or scale that cannot be provided when this has been explained to the customer repeatedly.
- Issuing requests or demands without demonstrating any reasonable grounds for lodging the complaint.

### **Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our organisation, employees, or complaints system and processes that result in a disproportionate and unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the complainant is clearly capable of doing this.

- Providing little or no detail with a complaint or presenting information in a deliberate manner to hinder the process.
- Refusing to follow or accept instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Displaying unhelpful behaviour – such as withholding information, acting dishonestly, and misquoting others.

### **Unreasonable (or frivolous) arguments**

Unreasonable or frivolous arguments include any arguments that are not based in reason or logic, that are incomprehensible, lacking in merit or substance, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, employees, services, time, and/or resources.

Arguments are unreasonable when they:

- Fail to follow a logical sequence.
- Are not supported by any evidence or substance, and/or are based on conspiracy theories.
- Lead a complainant to reject all other valid and contrary arguments.
- Are trivial when compared to the amount of time, resources and attention that the complainant demands.
- Are false, inflammatory or defamatory.

### **Unreasonable behaviour**

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a complainant is because the behaviour unreasonably compromises the health, safety and security of our employees, other service users or the complainant himself/herself. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- Harassment, intimidation or physical violence.
- Rude, confronting and threatening correspondence.
- Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- Stalking (in person or online).
- Emotional manipulation.

City of Adelaide has a zero-tolerance policy towards any harm, abuse or threats directed towards employees. Any conduct of this kind will be dealt with under this procedure and in accordance with our duty of care and work health and safety responsibilities.

## **Managing Unreasonable Complainant Conduct**

### **Changing or restricting a complainant's access to our services**

When behaviour is determined to constitute unreasonable complainant conduct, situations will often be managed by limiting or adapting the ways we interact with and/or deliver services to complainants by restricting:

- **Who they have contact with** – e.g. limiting a complainant to a sole contact person/employee member in our organisation.
- **What they can raise with us** – e.g. restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** – e.g. limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.
- **Where they can make contact** – e.g. limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – e.g. limiting or modifying the forms of contact that the complainant can have with us. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.

When using the restrictions provided it is recognised that discretion will need to be used to adapt to suit a complainant's personal circumstances, level of competency, and literacy skill. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure appropriateness and efficiency.

### **Who – limiting the complainant to a sole contact point**

Where a complainant tries to communicate with multiple employees within our organisation, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their access to a single employee member (a single point of contact) who will exclusively manage their complaint(s) and interactions. This will ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

The nomination of the single point of contact (SPOC) officer will be based on the most appropriate level of subject matter expertise that is required to manage the unreasonable complainant effectively.

### **What – restricting the subject matter of communications that we will consider**

Instances in which complainants repeatedly send communications that raise trivial, frivolous or vexatious issues, contain inappropriate content or relate to a complaint/issue that has already been comprehensively considered, we may restrict the issues/subject matter that we will respond to. For example, we may:

- Refuse to respond to correspondence that raise an issue that has already been dealt with comprehensively, that raises a trivial/vexatious/frivolous issue, or is not supported by clear/any evidence. The complainant will be advised in writing that future correspondence of this kind will be read and filed without acknowledgement unless we decide that the information is new and therefore warrants further investigation.

**When – limiting when and how a complainant can contact us**

If a complainant's contact with our organisation places an unreasonable demand on our time or resources because it is overly lengthy (e.g. disorganised and voluminous correspondence) or affects the health safety and security of our employees because it involves behaviour that is persistently rude, threatening, abusive or aggressive, we may limit when and/or how the complainant can interact with us. This may include:

- Limiting telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews.

We may also:

- Require the complainant revise their request so it is clear and concise in order for employees to perform an effective review
- Require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint.
- Restrict a complainant to sending emails to a particular email account (eg the organisation's main email account or a designated account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- Australia Post only
- Email only to a specific employee email or designated email account

If a complainant's contact is restricted to 'writing only', Council will clearly identify the specific means that the complainant can use to contact our office. If it is not suitable for a complainant to enter our premises to hand deliver written communication, this will be communicated to them as well.

Any communications that are received by our office in a manner that contravenes a 'write only' restriction will either be returned to the complainant or read and filed without acknowledgement.

**Where – limiting face-to-face interviews to secure areas**

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to our premises, we may consider restricting our face-to-face contact with them. These restrictions may include:

- Restricting access to particular secured premises or areas of the office – such as the reception area or secured room/facility.

- Restricting their ability to attend our premises to specified times of the day and/or days of the week only – for example, when additional security is available or to times/days that are less busy.
- Allowing them to attend our office on an ‘appointment only’ basis and only with specified employee. Note – during these meetings employee should always seek support and assistance of a colleague for added safety and security.
- Banning the complainant from attending our premises altogether and allowing some other form of contact – e.g. ‘writing only’ or ‘telephone only’ contact.

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may restrict contact to through a support person or representative. The support person may be nominated by the complainant but must be approved by Management.

When assessing a representative/support persons’ suitability, Management will consider factors such as: the nominated representative/support person’s competency and literacy skills, demeanour/behaviour and relationship with the complainant.

### **Terminating a complainant’s access to our services**

In rare cases, and as a last resort when all other strategies have been considered and/or attempted, Management in collaboration with the Customer & People and Governance Programs, may decide that it is necessary for our organisation to completely restrict a complainant’s contact/access to our services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for our employee or other parties because it involves one or more of the following types of conduct:

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on our premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a employee member from moving around freely either within their office or during an off-site visit – e.g. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases the complainant will be sent a letter notifying them that their access has been restricted as outlined below.

A complainant’s access to our services and our premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect our employees from personal violence, intimidation or stalking by a complainant.

### **Particular matters where unreasonable complainant procedures will not be applied**

Unreasonable complainant procedures will not be applied where a person has a legal right to take a particular course of action, for example:

- To apply for the review of a Council decision under Section 270 of the *Local Government Act 1999*;
- To take action available under the *Development Act 1993* or the *Expiation of Offences Act 1996*.
- To make a deputation request to be heard by the Council under the *Local Government Act 1999* and associated Regulations; or
- To apply for access to information under the *Freedom of Information Act 1999*.

The above pieces of legislation have their own refusal to access appeal processes for unreasonable complaints.

### **Procedure for assessing and restricting access to services**

#### **Consulting with relevant employees**

When a relevant Manager is made aware of potential unreasonable complainant conduct, they will review the customer's contact history in consultation with relevant Customer team members. This will cover:

- The circumstances that gave rise to the UCC.
- The impact of the complainant's conduct on our organisation, relevant employees, our time, resources, etc.
- The complainant's responsiveness to requests to stop the behaviour.
- The actions the employee member has taken to manage the complainant's conduct, if any.
- The suggestions made by relevant employees on ways that the situation could be managed.

#### **Criteria assessed**

Following consultation with relevant employees and a review of history, consideration will be given to the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances)
- Whether the complainant's case has merit
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct
- Whether changing or restricting access to our services will be effective in managing the complainant's behaviour
- Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations
- Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood or dependents.

- Whether the complainant's personal circumstances have contributed to the behaviour. For example, the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier
  - mental or other illness
  - personal crises
  - substance or alcohol abuse.
- Whether the complainant's response/ conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate
- Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact/access to our services

Once Managers and the Customer team have considered these factors they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies provided in the practice manual and this procedure.

### **Providing a warning letter**

Unless conduct poses a substantial risk to the health and safety of employees or other third parties (in which case a warning can be skipped), the complainant will be provided a written warning about their conduct in the first instance.

The warning letter will specify the details of the incident, list the types of access changes that may be imposed if the behaviour continues, and state the standard of behaviour expected.

### **Providing a notification letter**

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct, a notification advising of the restriction will be issued.

This notification letter will specify the details of the incidents, identify the change and/or restriction that will be imposed and what it means for the complainant, provide clear reasons for this restriction, and specify the duration of the change or restriction imposed.

### **Monitoring**

Once a complainant has been issued with a warning letter or notification letter, the Customer team and relevant Manager will review the complainant's record/restriction every 6 –12 months, on request, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the arrangement in place.

If the Customer Support team or Management determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise



inappropriate they may decide to modify the restrictions, impose further restrictions or terminate the complainant's access to our services altogether.

### **Natural Justice and Right of Appeal**

If not already provided, at either the warning letter and/or notification letter stage (depending on nature of behaviour), the complainant will be offered the chance to provide a response or evidence in relation to the proposed restriction which will be taken into consideration.

Complainants are also entitled to one appeal of a decision to change/restrict their access to our services. This review will be undertaken by a senior employee member who was not involved in the original decision to change or restrict the complainant's access. This employee member will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice including, procedural fairness.

### **Roles and Responsibilities**

#### **Employees**

All employees have the responsibility to provide the highest level of customer service to all customers of Council, including complainants.

Employees are to ensure that all current and potential complaints are dealt equitably and fairly, and resources are distributed on the basis of a merit.

Employees are also responsible for recording and reporting all incidents of unreasonable complainant conduct they experience or witness (as appropriate) to their immediate Manager, and relevant WHS reporting system if appropriate.

At all times, employees and Managers can seek advice from the Customer Experience team when faced with unreasonable conduct.

#### **Managers**

Managers are responsible for supporting employees to apply the strategies within this Guideline. For employees in roles with high customer interaction, Managers should support attendance to the Unreasonable Complainant Training offered by the Customer Support team.

Following a stressful interaction with a complainant, Managers are responsible for providing affected employees members with the opportunity to debrief their concerns either formally or informally. Managers will also ensure that employees are provided with proper support and assistance including medical and/or police assistance and support through programs such as Employee Assistance Program (EAP), if necessary.

Managers, in consultation with relevant Customer and Governance employees, have the responsibility and authority to change or restrict a complainant's access to our services in accordance with these Guidelines.

### **Customer Team Members/Associate Director Customer & People**

Members of the Customer team will be authorised to use and support employees to implement the strategies and tools within this Guideline. Any decisions to restrict a complainants' access to services requires the approval of the Associate Director, Customer & People.

When applying this Guideline, the aim will be to keep at least one open line of communication with a complainant. However, it is recognised that in extreme situations all forms of contact may need to be restricted to ensure the health and safety and security of our employee and/or third parties.

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### **OTHER USEFUL DOCUMENTS**

#### **Related documents**

- WHS and Equitable RTW Policy
- Corporate Complaint Handling Operating Guideline (including Section 270 Internal Review of Council Decisions)
- Code of Conduct for Council Employees

#### **Relevant legislation**

- Local Government Act SA 1999

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### **GLOSSARY**

Throughout this document, the below terms have been used and are defined as:

**Complaint:** An expression of dissatisfaction with a product or service delivered by the Council or its representatives that has failed to reach the standard stated, implied or expected.

**Complainant:** A customer who is dissatisfied with the service delivery of the Council or the handling of a request for information.

**Customer:** A general term for a person/s (and/ or organisation) who live, work, study, own property, conduct private or government business, visit or use the services, facilities and public spaces and places in the City.

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### **ADMINISTRATIVE**

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **3** years unless legislative or operational change occurs beforehand. The next review is required in **2022**.

**Review history:**

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2013/120823	Program Manager, City Safety & Customer Services	May 2013	Creation of document
ACC2013/120823	Director, Community	December 2016	Minor amendments to titles and formatting
ACC2019/113387	Director, Culture	18 July 2019	Significant review of language & structure in shifting from a 'Staff Procedure' to formal Operating Guideline

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